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OFFICE OF PETITIONS

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|-----------------------------------|------------------------|
| In re Application of | : |
| Kubler et al. | : |
| Patent Number: 7,633,934 | : |
| Issue Date: 12/15/2009 | : |
| Application No. 10/760057 | : |
| Filing or 371(c) Date: 01/16/2004 | : |
| Attorney Docket Number: 14364US04 | : |
| | : |
| | DECISION ON REQUEST |
| | FOR RECONSIDERATION OF |
| | PATENT TERM ADJUSTMENT |

This is a decision on the petition filed on October 18, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred seventy-seven (1277) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred seventy-seven (1277) days is **DISMISSED**.

Applicants request an additional day of patent term adjustment pursuant to 37 CFR 1.703(b), in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), February 11, 2010, and ending on the date the request for continued examination ("RCE") was filed.

Applicants arguments have been carefully considered. 35 U.S.C. 154(b)(1)(B), GUARANTEE OF NO MORE THAN 3-YEAR APPLICATION PENDENCY, states:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including —
(i) any time consumed by continued examination of the application requested by the applicant under section 132(b)

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on January 17, 2004, and ends on October 7, 2008, the day before the RCE was filed, and is 630 days. See, 35 U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment for the "B" delay period is 630 days, not 631 days, and the patent term adjustment is 1276 days, not 1277 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

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Attorney
Office of Petitions